

AMENDED IN ASSEMBLY MAY 1, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

AMENDED IN ASSEMBLY APRIL 3, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2951

Introduced by Assembly Member Goldberg

February 24, 2006

An act to amend Section 54999.1 of, to add Section 54999.7 to, and to add and repeal Section 54999.8 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2951, as amended, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility, and defines the term “nondiscriminatory” for these purposes.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory connection fee, as defined, or a nondiscriminatory capacity charge, as defined, or both. The bill would, except with respect to the imposition of a capital facilities fee on a school district, county office of education, community college district, the California State University, the University of California,

or state agency, require a public agency that provides public utility service to only charge a public agency rates, charges, surcharges, or fees that are determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users. It would, until January 1, 2010, require any judicial action or proceeding by a public agency that seeks a refund, or challenges the validity, of a fee, rate, charge, or surcharge, or increase, or any action by a public agency to validate an ordinance, resolution, or motion imposing or increasing any of these, to be commenced, as specified.

The bill would make specified declarations with respect to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54999.1 of the Government Code is
2 amended to read:
3 54999.1. For purposes of this chapter:
4 (a) “Actual construction costs” includes the cost of all
5 activities necessary or incidental to the construction of a public
6 utility facility, such as financing, planning, designing, acquisition
7 of property or interests in property, construction, reconstruction,
8 and rehabilitation.
9 (b) “Capacity charge” means a one-time charge to recover the
10 costs of public utility facilities necessary to establish new or
11 expand existing public utility service to a public agency.
12 (c) (1) “Capital facilities fee” means a nondiscriminatory
13 connection fee, a nondiscriminatory capacity charge, or both.
14 “Capital facilities fee” does not include any other rate, charge, or
15 surcharge, or any capital component thereof.
16 (2) For purposes of this subdivision, “nondiscriminatory”
17 means that the fee does not exceed an amount determined on the
18 basis of the same objective criteria and methodology applicable
19 to comparable nonpublic users, and is not in excess of the
20 proportionate share of the cost of the public utility facilities of
21 benefit to the person or property being charged, based upon the
22 proportionate share of use of those facilities.
23 (d) “Connection fee” means a fee to recover the costs of the
24 physical facilities necessary to directly connect a public agency

1 facility to a public utility service provided by a public agency,
2 including, but not limited to, meters, meter boxes, and pipelines
3 to make the connection, and the actual cost of labor and materials
4 for the installation of those facilities.

5 (e) “Public agency” means the United States or any of its
6 agencies, the state or any of its agencies, the California State
7 University, the Regents of the University of California, a county,
8 a county office of education, a city, a school district, community
9 college district, or any other district, a public authority, or any
10 other political subdivision or public corporation of this state.

11 (f) “Public utility facility” means a facility for the provision of
12 water, light, heat, communications, power, or garbage service,
13 for flood control, drainage or sanitary purposes, or sewage
14 collection, treatment, or disposal.

15 (g) “Public utility service” means service for water, light, heat,
16 communications, power, or garbage, or for flood control,
17 drainage or sanitary purposes, or sewage collection, treatment, or
18 disposal, provided by a public agency.

19 (h) “State agency” or “state” means any state office,
20 department, division, bureau, board, or commission.

21 SEC. 2. Section 54999.7 is added to the Government Code, to
22 read:

23 54999.7. (a) Except as provided in Section 54999.3, a public
24 agency that provides public utility service may only charge a
25 public agency rates, charges, surcharges, or fees that are
26 determined on the basis of the same objective criteria and
27 methodology applicable to comparable nonpublic users.

28 (b) In addition to other notices required pursuant to state law
29 or local ordinance or rule, whenever a public agency that
30 provides public utility service holds a public meeting to establish
31 or increase any rate, charge, surcharge, or fee, that public agency
32 shall provide a written notice of the meeting not less than 60 days
33 prior to the date of the public meeting to any public agency that
34 has filed a written request for such a notice with either the clerk
35 of the governing body or with any other person designated by the
36 governing body to receive these requests.

37 (c) Upon request of any affected public agency made not less
38 than 30 days prior to the date of the public meeting to establish or
39 increase any rate, charge, surcharge, or fee, a public agency that
40 provides public utility service shall meet with the affected public

1 agency to disclose, describe, and discuss the data and
2 methodology for establishing or increasing the rate, charge,
3 surcharge, or fee.

4 SEC. 3. Section 54999.8 is added to the Government Code, to
5 read:

6 54999.8. (a) Any judicial action or proceeding by a public
7 agency that seeks a refund of a fee, rate, charge, or surcharge, or
8 increase in any of those costs, or that challenges the validity of a
9 fee, rate, charge, or surcharge, or increase, imposed on or after
10 January 1, 2007, pursuant to this chapter, shall be commenced
11 within 120 days of the effective date of the imposition of the fee,
12 rate, charge, or surcharge, or increase.

13 (b) Any action by a public agency under this chapter to
14 validate an ordinance, resolution, or motion imposing or
15 increasing a fee, rate, charge, or surcharge shall be in accordance
16 with Chapter 9 (commencing with Section 860) of Title 10 of
17 Part 2 of the Code of Civil Procedure. However, no action by a
18 public agency imposing or increasing the fee, rate, charge, or
19 surcharge shall be commenced any earlier than 120 days from the
20 effective date of the imposition of the fee, rate, charge,
21 surcharge, or increase.

22 (c) In any judicial action or proceeding brought pursuant to
23 this section, the public agency imposing or increasing the fee,
24 rate, charge, or surcharge shall have the burden of showing that it
25 was established pursuant to Section 54999.3 or Section 54999.7.

26 (d) This section shall remain in effect only until January 1,
27 2010, and as of that date is repealed, unless a later enacted
28 statute, that is enacted before January 1, 2010, deletes or extends
29 that date.

30 SEC. 4. *The amendments made to Section 54999.1 of, and the*
31 *addition of Sections 54999.7 and 54999.8 to, the Government*
32 *Code by this act are not intended to affect any litigation*
33 *involving public utility services provided prior to January 1,*
34 *2007, brought prior to or subsequent to that date.* Nothing in the
35 legislative history of the amendments or additions made by this
36 act should be construed as any indication of the meaning of the
37 law as it existed prior to the effective date of the amendments
38 and additions made by this act.

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